THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 23734 OF 1998

Dated 17th April, 2007

Between:

Mir Mohammed Habibullah

…Petitioner

And

The Andhra Pradesh Wakf Board,
Opp. Public Gardens, Nampally,
Hyderabad.

…Respondents.

ORAL ORDER:

In this writ petition, the petitioner seeks a declaration that the action of the respondent – A.P. State Wakf Board in not appointing the petitioner as mutawalli of Mosque and Darga Hazrat Chanda Hussaini situated at Vengalapuram village, Adoni Taluq of Kurnool District as illegal and arbitrary.

The mosque and Darga Hazrat Chanda Hussaini is a registered wakf under Section 5 of the Wakf Act, 1954. It is stated that the said wakf was notified in the A.P.Gazette on 2.5.1963 at Sl.No.1463. It is the case of the petitioner that the petitioner's late father was the mutawalli of the said Darga and mosque and after the demise of his father, the petitioner had submitted an application to the respondent for appointment as mutawalli by enclosing no objection from his two brothers and legal heir certificate issued by the Mandal Revenue Officer, Adoni, pursuant to which, proceedings in R1/72/KNL/86, dated 12.8.1993 were issued asking the petitioner to publish in the paper calling for objections on his application. It is the grievance of the petitioner that though no objections have been received, no orders are being passed appointing the petitioner as mutawalli and the same is without any valid reason.

Counter affidavit is filed by the respondent, wherein, it is stated that pursuant to paper publication on the application of the petitioner, objections were invited and objections were received from two other claimants. In view of the said objections, an enquiry officer was appointed, who submitted his report stating that the petitioner had not established his right for appointment as mutawalli

of the institution in question. It is further stated that even the other objectors also did not establish their rights. As such, the enquiry officer, in his report, had recommended to take the institution under the direct management of the Wakf Board to safeguard the wakf and to take action to get the encroachers evicted from the wakf property. It is also stated that the matter could not be placed before the Board as the Board itself was superseded. It is stated that, in any event, in view of the establishment of the Wakf Tribunal, the petitioner can as well agitate his rights before the said Tribunal and in view of the said alternative remedy the writ petition is also not maintainable.

From the counter-affidavit filed, it is clear that even the petitioner participated in the enquiry conducted by the enquiry officer pursuant to the application submitted by the petitioner. As per the report of the enquiry officer, it appears, a finding is recorded that the petitioner has not established his right for appointment as mutawalli. Though it is the case of the petitioner that he is having successory right for appointment as mutawalli, but no material is filed in support of his claim, except, his own assertion in the affidavit. In that view of the matter and in view of the findings recorded by the enquiry officer as stated in the counter affidavit, while it is open for the respondent-Wakf Board to pass appropriate orders on the enquiry report submitted by the enquiry officer, no direction can be given for appointment of the petitioner as mutawalli in this writ petition.

The writ petition, which is devoid of any merits, is dismissed. No costs.

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17-4-2007

R.SUBHASH REDDY, J.

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